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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 207

WELTON LADNER AND LANDER NECAISE,
Petitioners.

versus

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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ROBERT L. GENIN,
Of Counsel.

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VERSUS

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

SUMMARY STATEMENT OF MATTER INVOLVED

The petitioners in this case were defendants in cause No. 22,573 of the Criminal Docket of the United States District Court for the Eastern District of Louisiana. The charge against them was that they conspired to violate an Act of Congress which is popularly known as the "Anti Racketeering Statute". While this is an Act of Congress of June, 1934, they were indicted for violating an Act of

Congress of January 18, 1934, (Record p. 2 to 6) though no such Act of Congress is in existence.

The indictment charged in substance that while the defendants were acting in their capacity as Officers of the State of Mississippi, they did,

> "then and there in the Eastern District of Louisiana, New Orleans Division, the counties of Hancock and Harrison, in the State of Mississippi and other places to your Grand Jurors unknown, knowingly, wrongfully, willfully, unlawfully, and feloniously conspire together to obtain and to attempt to obtain, by the use of and attempt to use, and threats to use coercion, the payments of money, and other valuable consideration from the owners, operators and drivers of over the road motor trucks, in connection with and relation to acts directly affecting interstate trade and commerce. * * *" (Record p. 2 to 6, inclusive)

Petitioners filed a plea to the jurisdiction of the Court, based on the proposition that, inasmuch as the indictment charged,

> "the Eastern District of Louisiana, New Orleans Division, the Counties of Hancock and Harrison, in the State of Mississippi",

and as the entire body of the indictment laid the alleged offense in Mississippi and the defendants were charged with using their official status as Mississippi Officers in Hancock and Harrison Counties in Mississippi to commit the alleged offense, jurisdiction and venue in this case

could not be anywhere but in the Southern District of Mississippi.

The plea challenging the jurisdiction of the District Court of the Eastern District of Louisiana, to try or determine this matter, was filed by defendants and was overruled and exception noted. (Record p. 7 to 8)

A request was then made by defendants for a Bill of Particulars, as the indictment was drawn in vague and general terms and alleged a period covering a whole year, from January, 1944 to December, 1944, and covered two Mississippi Counties, as well as twenty Louisiana Parishes (Counties), and did not name a single specific act or place, or give any date or time, or company, or person, or any other details, which would in any way properly inform defendants of even the barest details of the charge against them or allow them to prepare any defense to the indictment. The Bill of Particulars sought to get this information. (Record p. 11 to 15, inclusive) It was denied, without any reason being given, by the Trial Judge, and from that denial, exception was noted.

The indictment failed to charge a single overt act. A Motion to Dismiss was seasonably filed and was overruled.

On the day of trial, November 24, 1947, petitioners asked for a continuance, because even up to then they did not know when or where the alleged offenses took place and were not in a position to defend themselves. They were in the position of not having lawyers or the "Assistance of Counsel" as required by the Constitution of the United

States, as the lawyers representing the defendants could not know what specific charges they had to defend or on what dates, except "from January 1, 1944 to December 31, 1944", a period of 365 days. The continuance was refused by the court. (Record p. 17 to 23)

The District Attorney made an opening statement, which was not in accord with the indictment or the evidence, and said opening statement was allowed to stand by the trial court, over the protest of defendants, and exception of defendants was noted. (Record p. 42 to 43)

The evidence offered by the Government in its effort to prove conspiracy was purely circumstantial, and the defendants attempted to offer circumstantial evidence to negative and rebut this evidence but were not permitted to do so by the court, and an exception was noted. (Record p. 154 to 156) The evidence failed to show any conspiracy on the part of the defendants whatever but did show the falsity or incorrectness of the opening statement of the District Attorney.

A motion to direct the verdict at the close of the Government's case, and again at the close of the whole case, was duly made by petitioners and denied by the court and exceptions noted. (Record p. 131 and p. 182)

A verdict of guilty was returned against the defendants, and a motion for a new trial and an arrest of judgment was seasonably made and overruled, and exception noted. (Record p. 221 to 223) The defendants were sentenced to one year in prison. An appeal to the United

States Circuit Court of Appeals, Fifth Circuit, was duly taken. Eight Bills of Exception were settled and allowed.

The judgment of the court affirming the conviction and sentence of the District Court was entered by the United States Circuit Court of Appeals for the Fifth Circuit on June 10, 1948 and is reported in..... Federal (2d) at page ..... (Not reported at time brief was printed.)

A rehearing was timely applied for and was denied on July 16, 1948.

JURISDICTION

The original Judgment of the Fifth Circuit Court of Appeals was entered on June 10, 1948. (Record p. 236) The rehearing was refused on July 16, 1948. (Record p. 246)

The jurisdiction of this Court is invoked under Section 240-a of the Judicial Code as amended by the Act of February 13, 1925 (Title 28 USCA 347). The petitioners herein in being charged, indicted, tried, convicted, and sentenced to a year in jail for the violation of "an Act of Congress of January 18, 1934" (Record p. 3), a non-existent statue, were deprived of "due process of law" as guaranteed under the 14th Amendment of the United States Constitution.

The denial of the motion for a bill of particulars was in this case arbitrary, capricious, oppressive, and an abuse of discretion, and deprived the petitioners of their consti-

tutional rights under the 6th Amendment of the United States Constitution to be properly informed of the charge against them so that they might have "assistance of counsel" in preparing their defense.

QUESTIONS PRESENTED

The Circuit Court of Appeals in its Opinion and Judgment failed to pass upon or erroneously decided the following questions raised by the appellants (now petitioners) and which are of the utmost importance in the case.

1. Whether or not any offense was charged in the indictment by attempting to charge an offense under a non-existing statute.

2. If an offense was charged, whether or not the proof, taken most strongly in the Government's favor, showed any violation of the "Anti Racketeering Statute" (18 USCA 420 et. seq.).

3. On the jurisdiction of the court as to whether or not the indictment showed venue in Harrison and Hancock Counties, Mississippi and not in Louisiana.

4. Whether or not under this statute it is necessary to allege and to prove overt acts.

5. Whether defendants, who are charged under a blanket indictment covering 365 days in 1944, and in vague and general terms, are entitled to a bill of particulars to properly defend themselves.

6. Whether "assistance of counsel" means active and real assistance or merely pro forma assistance of men who themselves know nothing of the details of alleged charges and therefore cannot render any adequate assistance either in the trial or the preparation of the case.

7. Whether or not a District Attorney should be allowed to misstate the case to the prejudice of the defendants and whether or not he can be compelled to correct his misstatement of the facts in the fact of evidence to the contrary.

8. Whether or not defendants can be deprived from offering circumstantial evidence showing innocence to rebut circumstantial evidence tendered by the Government to prove guilt.

9. Whether or not an attempt to bribe one of the defendants (Necaise) by a Government witness, which bribe was refused by him (Necaise), can be considered an overt act of Necaise and Ladner to an alleged conspiracy which had not even been shown in Mississippi up to the date of the attempted bribe.

In the interest of brevity under the Rules of this Court, petitioners do not at this time set forth all of the points which will be urged at the argument on the merits of this cause should the Writ be granted, nor all of the contentions in support of such points; but in order to comply with the rule of this Court requiring that all issues upon which decision is requested be presented in the Petition for Certiorari, petioners here refer to and incorporate into this petition all of the matters presented in its State-

ment of Points to be Relied On (Record p. 225) on the appeal to the United States Circuit Court of Appeals for the Fifth Circuit, with the same force and effect as if herein set out in full.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

Petitioners assign as reasons for the issuance of a Writ of Certiorari the following:

1. There is no offense under an Act of Congress of January 18, 1934 as charged in the indictment, yet the petitioners were charged for the violation of such Act and sentenced for a violation of the Act of Congress of June 18, 1934. Assuming for the sake of argument that an offense was charged under the "Anti Racketeering Statute", the proof wholly failed to show any offense under Title 18 USCA 420, or any subsection thereunder.

2. The petitioners have been deprived of their constitutional rights which were guaranteed under the "due process" amendment (14th Amendment) and the 6th Amendment to the Constitution of the United States and were forced to attempt to defend themselves in an indictment which attempted to cover a period of 365 days without giving any dates or specific charges of persons, time, and places whatsoever.

3. The Circuit Court of Appeals in its Opinion ignored several assignments of error without comment, and upon the points which it did discuss, petitioners with utmost deference say, erroneously stated the facts in the record.

4. The Circuit Court of Appeals held that this case was controlled by *Singer vs U. S., 323 U. S. 338* and that no overt acts were necessary to be alleged in the indictment.

Wherefore, your petitioners respectfully pray that a Writ of Certiorari be issued out of and under the Seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a transcript and record of the proceedings herein; and that the Decree or Judgment of the United States Circuit Court of Appeals for the Fifth Circuit be reversed by this Honorable Court and your petitioners have such other and further relief in the premises as to this Honorable Court may seem meet and just.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Welton Ladner and Lander Necaise were convicted in the United States District Court of the Eastern District of Louisiana of violating the Act of January 18, 1934 and sentenced to the custody of the Attorney General for a period of one year. They thereupon appealed to the United States Circuit Court of Appeals for the Fifth Circuit, which affirmed the conviction, and thereafter filed a petition for rehearing which was denied. The verdict of the jury is shown on Page 28 of the Record. Ruling of the court denying a new trial, Record p. 187-193. The Judgment of the United States Circuit Court of Appeals is reported in ..... F. 2d ..... (not reported at time brief was printed), and in the Record at page 236. The petition for rehearing was denied. (Record p. 246.)

JURISDICTION

Jurisdiction of this Court is invoked under Section 240-a of the Judicial Code as amended by the Act of February 13, 1925 (Title 28 USCA 347). The indictment charges a violation of a non-existent statute, namely: "Act of January 18, 1934". Both the District Court and the Appellant Court refused to consider this, although repeatedly called to their attention. To charge, indict, try, convict, and sentence defendants to a year in jail for the violation of "*an Act of Congress of January 18, 1934*", a non-existent statute, is to deprive them of "due process of law" as guaranteed under the 14th Amendment of the United States Constitution.

This Court has jurisdiction to determine the venue of the trial of the defendants charged with an offense in Mississippi and tried in the State of Louisiana. This also involves "due process of law".

The indictment failed to appraise the defendants of the charge against them with certainty, so that they might plead double jeopardy in the event of another attempted prosecution or that they might prepare their defense.

The refusal to grant a bill of particulars was such an abuse of discretion on the part of the trial court as to deprive the defendants of their constitutional rights under the 6th Amendment of the United States Constitution, to be fully apprised and informed of the charge against them. The refusal of a bill of particulars and of a continuance until such bill was ordered and furnished deprived them also of any real "assistance of counsel". It made the efforts of their lawyers woefully inadequate and futile as they (the counsel) were entirely in the dark as to the exact charges, until the District Attorney made his opening statement at the trial and after the jury was selected and sworn. It deprived counsel of the proper information on which to accept or reject jurors. The information came too late. The trial court by his ruling stopped defendants from presenting circumstantial evidence to show innocence and to rebut and explain the circumstantial evidence of the prosecution tending to prove guilt, and was in effect depriving the defendants of a fair trial and denying them "due process of law" in violation of the 14th Amendment of the United States Constitution.

SPECIFICATION OF ERRORS RELIED UPON

1.

The court erred in not granting the motion to dismiss indictment for lack of jurisdiction (Bill of Exception 1).

2.

The court erred in refusing to dismiss the indictment as faulty and not in accord with law (Bill of Exception 2).

3.

The court erred in refusing the motion for a bill of particulars filed prior to arraignment (Bill of Exception 3).

4.

The court erred in refusing the defendants' motion for continuance (Bill of Exception 4).

5.

The court erred in refusing to dismiss the indictment, for lack of jurisdiction, after the opening statement was made to the jury by the District Attorney, and which opening statement failed to assert any affirmative act by defendants in the Eastern District of Louisiana (Bill of Exception 5).

6.

The court erred in refusing to direct a judgment of acquittal as per motion at the close of the Government's case (Bill of Exception 6).

7.

The court erred in refusing a motion for judgment of acquittal as per motion at the close of the Government's 6)

8.

The court erred in refusing to allow defendants to offer in evidence the testimony of nine (9) witnesses, tendered by the defendants to rebut circumstantial evidence introduced by the Government, in their attempt to convict the defendants (Bill of Exception 7).

9.

The court erred in refusing a motion for a new trial filed by the defendants (Bill of Exception 8).

10.

The court erred in refusing a motion in arrest of judgment (Bill of Exception 8).

POINTS OF LAW INVOLVED

Point I.

THE INDICTMENT WHOLLY FAILED TO CHARGE AN OFFENSE UNDER SECTION 420a-d, TITLE 18, U. S. C. A., OR ANY AMENDMENT THERETO.

Point II.

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A VERDICT OF GUILTY.

Point III.

THE APPELLANTS WERE ENTITLED TO A CONTINUANCE IN ORDER THAT THEY MIGHT PROPERLY PREPARE THEIR DEFENSE.

Point IV.

APPELLANTS WERE ENTITLED TO A NEW TRIAL.

Point V.

APPELLANTS HAVE BEEN DEPRIVED OF THEIR CONSTITUTIONAL RIGHTS GUARANTEED UNDER THE SIXTH AMENDMENT.

ARGUMENT

In the interest of brevity, we shall undertake to briefly and concisely set out the argument and citation of authorities covering the above five points under two general headings.

No Offense under Anti Racketeering Statute was Charged or Proved Against Petitioners.

The petitioners herein were indicted for the violation of an Act of Congress of January 18, 1934, and being convicted, were sentenced to one year in jail. There is no such act as "Act of January 18, 1934". This was repeatedly brought to the attention of the District Court and of the Circuit Court of Appeals, but both courts refused to consider this point, and to permit a conviction to stand in the face of such a glaring error is to deprive them of "due

process of law" as guaranteed under the 14th Amendment to the United States Constitution.

The Statute of the United States which the indictment attempts to charge the petitioners with violating is Title 18 USCA 420-a in an exercise of the power of Congress to regulate interstate commerce, and the only basis upon which the Federal Jurisdiction was invoked against the petitioners is that they conspired to interfere with interstate commerce. The truck owners and operators testified that they were violating the laws of the State of Mississippi and were seeking the privilege to evade the laws of the State of Mississippi by paying these defendants to permit passage of their trucks without the necessity of paying the required tax. There is absolutely no other testimony. The Government's witnesses admitted that on every occasion when their trucks were stopped, the trucks or their operators were violating the laws of said State. The indictment attempts to charge a violation of the "Anti Racketeering Statute" of Congress while the proof shows bribery and attempted bribery on the part of the Government's witnesses. There is a total lack of proof of the essential elements of the crime of conspiracy or racketeering.

The indictment must allege clearly and specifically commission of crime within State and District wherein indictment is pending, and in the absence of such allegation, when the point is properly raised, the defect is fatal to charge.

U. S. vs. International Brotherhood, Teamsters and Chauffeurs, etc., 315 U. S. 521, 118 F. 2d 684, 62 Sup. Ct. 642;

U. S. vs. Feranti, 59 F. Sup. 1003;

Mitchell vs. U. S., 118 Fed. 2d 653.

In the case of *Nick vs. U. S.*, 122 F. 2d 671, the court said:

"The gist of the unlawful act is extortion. Extortion involves a state of mind as an element of an offense under the Act. Unless there is some form of compulsion (either physical or fear) there is no crime under this Act. If the exhibitors had paid this money of their own initiative and voluntarily there would have been no violation of the Act."

The court in the case of *U. S. vs. McGlone D. C. Pa.*, 19 F. Supp. 285, defined racketeering thus:

"Racketeering is the organized use of threats, coercion, intimidation, and use of violence to compel the payment for actual or alleged services of arbitrary or excessive charges under the guise of membership dues, protection fees, royalties, or service rates, the cloak of blackmail and extortion.

" 'Racketeering' is an organized conspiracy to commit the crimes of extortion or coercion, or attempts to commit extortion or coercion, within the definition of these crimes found in the penal law of the State of New York and other jurisdiction. Racketeering, from the standpoint of extortion, is the obtaining of money or property from another, with his consent, induced by the wrongful use of force or fear. The fear which constitutes the legally necessary element in extortion is induced by oral or written threats to

do an unlawful injury to the property of the threatened person by means of explosives, fire, or otherwise; and to kill, kidnap, or injure him or a relative of his or some member of his family. 'Racketeering', from the standpoint of coercion, usually takes the form of compelling by use of similar threats to person or property a person to do or abstain from doing an act which such other person has the legal right to do or abstain from doing, such as joining a so-called protective association to protect his right to conduct a business or trade."

The testimony taken most strongly for the Government fails to show any conspiracy ever formed between Necaise and Ladner, petitioners herein, and at no time was there any intimation of any conspiracy having been formed prior to the alleged overt act consisting of a conversation at the White Kitchen within the State of Louisiana when Necaise refused a bribe. Ladner took no part in the conversation whatever. The other isolated instance upon which the Government relies for a conviction transpired several months later and within the territorial boundaries of Mississippi. The sole incident relied upon by the Government to give jurisdiction to the District Court of the Eastern District of Louisiana was the conversation between Necaise and Herrin at the White Kitchen in Louisiana; all other acts taking place entirely within Mississippi.

Petitioners Have Been Deprived of their Constitutional Rights under the 14th Amendment and under the 6th Amendment by Not Being Fully and Properly Ap-

prised of the Offense With Which they Were Sought to be Charged.

The indictment failed utterly to apprise them except by a blanket charge embracing a period of an entire year (1944) by giving them no names, dates, or occasions so that they might have an opportunity to adequately prepare their defense and to have real "assistance of counsel". It was impossible for their attorneys to make any preparation for a defense of petitioners when they themselves had no knowledge of the charges as to dates, persons, occasions, etc. They were entitled to a bill of particulars apprising them fully of the nature of the charge so that they might defend and so that they might in a subsequent attempted prosecution be enabled to plead former jeopardy.

U. S. vs. Koon Wah Lee, 6 F. Rules Decisions 456;

Sutton vs. U. S. (5th Circuit) 157 F. 2d 661, 663;

Berger vs. U. S., 55 S. Ct. Rep. 629;

Bennett vs. U. S., 227 U. S. 333, 33 S. Ct. 288;

Harrison vs. U. S., 200 F. 662;

U. S. vs. Wills, 36 F. 2d 855;

Cf. Hagner vs. U. S., 285 U. S. 427, 52 S. Ct. Rep. 417, 76 L. Ed. 861;

John T. Williams vs. U. S., 164 F. 2d 302;

Keck vs. U. S., 172 U. S. 434, 19 S. Ct. 254, 43 L. Ed. 505;

Kohl vs. Lehlbac, 160 U. S. 293, 16 S. Ct. 304, 40 L. Ed. 432;

Buchanan vs. U. S., 164 F. 2d 15.

The defendant in a case has the constitutional right to have assistance of counsel in preparing his case, and this means effective assistance.

Beckett vs. Hudspeth, 131 F. 2d 195;

Edwards vs. U. S., 139 F. 2d 365;

Thomas vs. District of Columbia, 90 F. 2d 424.

"Presumptions of guilt of conspiracy are not lightly to be indulged from mere meetings." *U. S. vs. Di Re*, 68 S. Ct. Rep. 222-228.

In spite of the fact that no conspiracy prior to June, 1944 was shown by a scintilla of evidence, yet the learned court for the Fifth Circuit stated in its Opinion that the existence of the conspiracy might be inferred from the commission in concert of overt acts by the defendants. This does great violence in our humble judgment to the facts as reflected by the Record.

CONCLUSION

In conclusion, we respectfully submit that because of the many and manifest errors committed, these petitioners have not had a fair trial and such a trial as was contemplated and guaranteed under the Constitution of the United States. They preserved every point, which they urge here, seasonably and by proper method. They have been con-

victed of an offense different from the one charged in the indictment.

We think a very sacred right, the liberty of these two defendants, has been taken away from them in violation of their constitutional guarantee, and for the errors committed, the Writ of Certiorari should be granted as prayed for in the petition.

Respectfully submitted,

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